



Defendant ASRock America, Inc. (“ASRock America”), by and through its attorneys, hereby answers the First Amended Class Action Complaint of Plaintiff Joshua Smith (“Plaintiff” or “Smith”) filed on July 3, 2014.

## **NATURE OF THE ACTION**

1. According to the FAC, the term “ASRock” refers to Defendant ASRock America, Inc., which, for purposes of this Answer, will be referred to as “ASRock America.” Defendant ASRock America denies that it is a leading manufacturer of motherboards, it denies that it was acquired by Pegatron Corporation, denies that it partnered with Fatal1ty, and denies that Fatal1ty is “a company that creates specialized hardware for computer gaming enthusiasts.” Defendant ASRock America further denies the remaining allegations of this paragraph.

2. Defendant ASRock America denies that it developed any marketing materials for the ASRock Fatal1ty motherboards. Defendant ASRock America denies the allegations of this paragraph.

### 3. Denied.

4. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them. Said Defendant further denies that plaintiff and/or the class he seeks to represent are entitled to any relief from this answering defendant.

## PARTIES

5. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

6. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

7. Defendant ASRock America admits the first sentence of this paragraph, admits that its Sales Department operates out of its California offices, and admits that it is an indirect subsidiary of Pegatron Corporation. Defendant ASRock America denies the remaining allegations of this paragraph.

8. Defendant ASRock America lacks knowledge or information sufficient to form a

1 belief about the truth of these allegations and on such basis denies them.

2 **JURISDICTION AND VENUE**

3 9. Defendant ASRock America admits that Plaintiff is a citizen of a different state than  
4 the Defendants. Defendant ASRock America denies the remaining allegations of this paragraph.

5 10. Defendant ASRock America admits that it conducts business in California.  
6 Defendant ASRock America denies that "...the events giving rise to this lawsuit occurred, in  
7 substantial part, in California. As to the remaining allegations of this paragraph, Defendant ASRock  
8 America lacks knowledge or information sufficient to form a belief about the truth of these  
9 allegations and on such basis denies them.

10 11. Defendant ASRock America lacks knowledge or information sufficient to form a  
belief about the truth of these allegations and on such basis denies them.

12 **FACTUAL BACKGROUND**

13 12. Defendant ASRock America denies these allegations as to it. Defendant ASRock  
14 America admits that the website [www.asrock.com](http://www.asrock.com) contains language along the lines of the quoted  
15 language in this paragraph; however, such website is not maintained, hosted, or owned by Defendant  
16 ASRock America and any references to "ASRock" on such website are not to Defendant ASRock  
17 America.

18 13. Denied.

19 14. Defendant ASRock America lacks knowledge or information sufficient to form a  
belief about the truth of these allegations and on such basis denies them.

20 21. Defendant ASRock America lacks knowledge or information sufficient to form a  
belief about the truth of these allegations and on such basis denies them.

22 23. 16. Defendant ASRock America admits that the press release referred to in this paragraph  
24 was issued in December 2010 and further alleges that the press release speaks for itself. Defendant  
25 ASRock America denies that the reference to "ASRock" in such press release is to this answering  
26 Defendant. Defendant ASRock America lacks knowledge or information sufficient to form a belief  
27 about the truth of the allegation that such press release was issued by Auravision or that it was issued  
28 from California and on such basis denies such allegations.

1           17. Denied.

2           18. Denied.

3           19. Defendant ASRock America denies that it was involved in developing or producing  
4 any presentations or advertising statements relating to the ASRock Fatal1ty motherboards. Said  
5 Defendant further denies the allegations of this paragraph.

6           20. Defendant ASRock America admits that the physical packaging of certain models of  
7 the ASRock Fatal1ty motherboards contained, at one time, the following statement, among others:

8                 “Boosts Networking Performance 5X.”

9                 “5X Networking Performance...feature Killer E2200 Intelligent  
10 Networking Platform, which boosts networking performance up to 5X  
for time-sensitive UDP (User Datagram Protocol) based applications,  
such as online games and high quality media streaming.”

12           Except as so expressly admitted Defendant ASRock America denies the allegations of this  
13 paragraph.

14           21. Defendant ASRock America admits that certain of the ASRock Fatal1ty  
15 motherboards contain the Qualcomm Atheros Killer E2200 Intelligent Networking Platform and that  
16 this component is referred to as the “Killer E2200 Series LAN” on the product packaging of certain  
17 ASRock Fatal1ty motherboards. This answering Defendant denies that Qualcomm sells such  
18 component to ASRock America. As to the remaining allegations of this paragraph, Defendant  
19 ASRock America lacks knowledge or information sufficient to form a belief about the truth of these  
20 allegations and on such basis denies them.

21           22. Defendant ASRock America lacks knowledge or information sufficient to form a  
22 belief about the truth of these allegations and on such basis denies them.

23           23. Defendant ASRock America lacks knowledge or information sufficient to form a  
24 belief about the truth of the allegations of the first sentence of this paragraph and on such basis  
25 denies them. This answering Defendant denies the allegations of the second sentence of this  
26 paragraph. Defendant ASRock America had no involvement in the design or production of the  
27 ASRock Fatal1ty motherboards, or any of their components, and on such basis admits that it did not  
28 modify the components. Defendant ASRock America denies the remaining allegations of this

1 paragraph.

2       24. Defendant ASRock America lacks knowledge or information sufficient to form a  
3 belief about the truth of the allegations of the first sentence of this paragraph and on such basis  
4 denies them. This answering Defendant admits the allegations of the second sentence of this  
5 paragraph. This answering Defendant denies the allegations of the third sentence of this paragraph.

6       25. Defendant ASRock America lacks knowledge or information sufficient to form a  
7 belief about the truth of these allegations and on such basis denies them.

8       26. Defendant ASRock America does not maintain a website and denies that it made any  
9 of the statements alleged on any website, and denies the allegations of this paragraph.

10      27. Defendant ASRock America admits that changes were made to statements made on  
11 the [www.asrock.com](http://www.asrock.com) website along the lines alleged in this paragraph but such website is not  
12 created, hosted, maintained or owned by it. Defendant ASRock America does not maintain a  
13 website and denies that it made any of the statements alleged on any website, and denies the  
14 allegations of this paragraph.

15      28. Defendant ASRock America admits that Figure 3 sets forth a portion of the product  
16 packaging that was used for a certain period of time for certain of the ASRock Fatal1ty  
17 motherboards. Defendant ASRock America denies that it was involved in the creation of the  
18 advertising statements at issue in the FAC or created, hosted, maintained or owned any website  
19 which contains such statements and further denies that it was involved in the creation of the product  
20 packaging for any of the products at issue in this action and denies the allegations of this paragraph.

21      29. Defendant ASRock America lacks knowledge or information sufficient to form a  
22 belief about the truth of these allegations and on such basis denies them.

23      30. Defendant ASRock America denies that it was involved in the creation of the  
24 advertising statements at issue or created, hosted, maintained or owned any website which contains  
25 such statements and was not involved in the creation of the product packaging for any of the  
26 products at issue in this action and denies the allegations of this paragraph.

27      31. Defendant ASRock America lacks knowledge or information sufficient to form a  
28 belief about the truth of these allegations and on such basis denies them.

1           32. Defendant ASRock America denies that it made any of the advertising statements  
2 which are the subject of the FAC and denies the allegations of this paragraph.

3           33. Defendant ASRock America denies that it made any of the statements alleged on any  
4 website created, hosted maintained, or owned it and denies the allegations of this paragraph.

5           34. Defendant ASRock America admits that changes were made to statements made on  
6 the [www.asrock.com](http://www.asrock.com) website along the lines alleged in this paragraph but such website is not  
7 created, hosted, maintained or owned by it. Defendant ASRock America does not maintain a  
8 website and denies that it made any of the statements alleged on any website, and denies the  
9 allegations of this paragraph.

10          35. Defendant ASRock America admits that Figure 5 sets forth a portion of the product  
11 packaging that was used for a certain period of time for certain of the ASRock Fatal1ty  
12 motherboards. Defendant ASRock America denies that it was involved in the creation of the  
13 advertising statements at issue or created, hosted, maintained or owned any website which contained  
14 such statements and was not involved in the creation of the product packaging for any of the  
15 products at issue in this action and denies the allegations of this paragraph.

16          36. Denied.

17          37. Defendant ASRock America admits that the ASRock Fatal1ty Z87 motherboard is  
18 designed to use the Intel Z 87 Chipset; except as so expressly admitted this answering Defendant  
19 denies the first sentence of this paragraph and further denies that it played any role in this design,  
20 production, manufacturer or creation of such motherboards. As to the second sentence of this  
21 paragraph, Defendant ASRock America lacks knowledge or information sufficient to form a belief  
22 about the truth of these allegations and on such basis denies them.

23          38. Defendant ASRock America lacks knowledge or information sufficient to form a  
24 belief about the truth of these allegations and on such basis denies them.

25          39. Denied.

26          40. Defendant ASRock America denies that it was involved in the creation of any user  
27 manual for any of the products at issue in the FAC and denies the allegations of this paragraph.

28          41. Defendant ASRock America lacks knowledge or information sufficient to form a

belief about the truth of these allegations and on such basis denies them.

42. Denied.

43. Defendant ASRock America admits that changes were made to statements made on the [www.asrock.com](http://www.asrock.com) website along the lines alleged in this paragraph but such website is not created, hosted, maintained or owned by it. Defendant ASRock America does not maintain a website and denies that it made any of the statements alleged on any website, and denies the allegations of this paragraph.

44. Denied.

45. Denied.

46. Denied.

47. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

48. Denied.

49. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

50. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

51. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

52. Denied.

53. Denied.

54. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

55. Denied.

## **CLASS ALLEGATIONS**

56. Defendant ASRock America denies that this action may properly proceed as a class action under the provisions of any applicable law. Responding further, Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on

such basis denies them.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

**FIRST CAUSE OF ACTION**  
**Violation of Consumers Legal Remedies Act**  
**Cal. Civ. Code §§ 1750, et seq.**  
**(On Behalf of Plaintiff and the Class)**

64. Defendant ASRock America hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

65. Defendant ASRock America denies that it engaged in the actions and/or conduct alleged in the FAC and denies the allegations of this paragraph.

66. Admitted.

67. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

68. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

78. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

79. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

80. Denied.

81. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

82. Denied.

83. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph and on such basis denies them. Said answering defendant admits the allegations in the second sentence of this paragraph. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

**SECOND CAUSE OF ACTION**  
**Violations of California's Unfair Competition Law**  
**Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
**(On Behalf of Plaintiff and the Class)**

84. Defendant ASRock America hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

85. The allegations in this paragraph are conclusions of law and not allegations of fact. Defendant ASRock America admits that the courts and the California legislature have stated the purpose of the UCL and that all parties are bound by such expressions to the extent that the law so provides. Except as so expressly admitted, Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

86. The allegations in this paragraph are conclusions of law and not allegations of fact.

Defendant ASRock America admits that the express language of the UCL speaks for itself. Except as so expressly admitted, ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

87. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

88. Denied.

89. Denied.

90. Denied.

91. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

92. Defendant ASRock America denies that it engaged in the acts alleged in the FAC, denies any conduct of these defendants was fraudulent or in any way improper and denies the allegations of this paragraph.

93. Denied.

94. Denied.

95. Defendant ASRock America denies that it engaged in the acts alleged in the FAC, denies any conduct of it was fraudulent or in any way improper and denies the allegations of this paragraph. As to the remaining allegations in this paragraph, Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

96. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

**THIRD CAUSE OF ACTION**  
Violation of False Advertising Law  
Cal. Bus. & Prof. Code §§ 17500, *et seq.*  
(On Behalf of Plaintiff and the Class)

97. Defendant ASRock America hereby incorporates by reference its responses to the

allegations in each of the preceding paragraphs as if set out in full herein.

98. The allegations in this paragraph are conclusions of law and not allegations of fact. Defendant ASRock America admits that the express language of the FAC speaks for itself. Except as so expressly admitted, ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

**FOURTH CAUSE OF ACTION**  
Fraud in the Inducement  
(On Behalf of Plaintiff and the Class)

104. Defendant ASRock America hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

105. Denied.

106. Denied.

107. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

108. Denied.

109. Denied.

110. Denied.

### 111. Denied.

112. Denied.

113. Denied.

114. Defendant ASRock America lacks knowledge or information sufficient to form a

1 belief about the truth of the allegations in this paragraph and on such basis denies them. Said  
2 answering defendant further alleges that neither plaintiff nor the members of the class he seeks to  
3 represent are entitled to any remedy against this answering defendant.

4

**FIFTH CAUSE OF ACTION**  
**Breach of Express Warranties**  
**(On Behalf of Plaintiff and the Class)**

5

6 115. Defendant ASRock America hereby incorporates by reference its responses to the  
7 allegations in each of the preceding paragraphs as if set out in full herein.

8 116. Defendant ASRock America denies that it made any of the advertising statements at  
9 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
10 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
11 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
12 of this paragraph.

13 117. Defendant ASRock America denies that it made any of the advertising statements at  
14 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
15 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
16 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
17 of this paragraph.

18 118. Defendant ASRock America denies that it made any of the advertising statements at  
19 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
20 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
21 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
22 of this paragraph.

23 119. Defendant ASRock America denies that it made any of the advertising statements at  
24 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or  
25 owned any website referred to in the FAC, and further denies it made any statement referred to in the  
26 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations  
27 of this paragraph.

28 120. Denied.

121. Defendant ASRock America denies that it made any of the advertising statements at issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or owned any website referred to in the FAC, and further denies it made any statement referred to in the FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

122. Defendant ASRock America denies that it made any of the advertising statements at issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or owned any website referred to in the FAC, and further denies it made any statement referred to in the FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

123. Defendant ASRock America denies that it made any of the advertising statements at issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or owned any website referred to in the FAC, and further denies it made any statement referred to in the FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations of this paragraph.

124. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

**SIXTH CAUSE OF ACTION**  
**Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class)**

125. Defendant ASRock America hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

126. Denied.

127. Denied.

128. Denied.

129. Defendant ASRock America lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said

answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

## **AFFIRMATIVE DEFENSES**

ASRock America hereby asserts the following affirmative defenses to Plaintiff's claims. ASRock America reserves the right to raise other defenses, affirmative or otherwise, that may become evident during discovery and during any other proceeding in this action. ASRock America also reserves the right to amend and/or delete any affirmative defenses in the event that discovery indicates it may be appropriate to do so.

## **FIRST AFFIRMATIVE DEFENSE** **(Failure to State a Claim)**

130. As a first affirmative defense, Defendant ASRock America alleges that Plaintiff has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**  
(Immunity under Communications Decency Act, 47 U.S.C. § 230)

131. As a second affirmative defense, Defendant ASRock America alleges that it did not create or develop any of the advertising statements on which the claims in this action are based, and to the extent that any such statement is linked to or otherwise accessed by or through any website of ASRock America, assuming there is any such website, ASRock America is immune from liability and/or no claim can be brought against ASRock America based on such statement under the Communications Decency Act, 47 U.S.C. § 230.

## **THIRD AFFIRMATIVE DEFENSE** **(Failure to Mitigate Alleged Damages)**

132. As a third affirmative defense, Defendant ASRock America alleges that Plaintiff has not mitigated its damages, if any.

#### **FOURTH AFFIRMATIVE DEFENSE** (Unconstitutionality)

133. As a fourth affirmative defense, Defendant ASRock America alleges that the claims, to the extent that they seek exemplary or punitive damages, violate Defendant's rights to procedural

due process under the Fourteenth Amendment of the United States Constitution and, therefore, fail to state a cause of action upon which punitive or exemplary damages can be awarded.

## **FIFTH AFFIRMATIVE DEFENSE** **(Reservation of Rights)**

134. As a fifth affirmative defense, Defendant ASRock America alleges that discovery has not yet begun, and on the basis of such discovery, other affirmative defenses may become known or substantiated. Defendant reserves the right to add affirmative defenses within a reasonable time after the facts of said affirmative defenses may become known to Defendant.

## **SIXTH AFFIRMATIVE DEFENSE (Lack of Adequate Representation)**

135. As a sixth affirmative defense, Defendant ASRock America alleges the named Plaintiffs lack standing as representatives of the proposed class and do not adequately represent the putative class members.

## **SEVENTH AFFIRMATIVE DEFENSE** **(Fails to Meet Rule 23)**

136. As a seventh affirmative defense, Defendant ASRock America alleges that this action does not meet the requirements for class action treatment under Rule 23 of the Federal Rules of Civil Procedure, or any other applicable law, including, but not limited to, failing to satisfy the requirements of numerosity, commonality and predominance, typicality, and superiority. Plaintiffs cannot prosecute this action on behalf of the putative class they purport to represent.

## **EIGHTH AFFIRMATIVE DEFENSE** **(Defense of Other Defendants)**

137. As an eighth affirmative defense, Defendant ASRock America incorporates and adopts each and every applicable defense asserted by any other defendant in this action.

WHEREFORE, Defendant ASRock America, Inc. prays as follows:

1. The Plaintiff take nothing by reason of its complaint and that judgment be entered in favor of Defendants.

1           2. That Defendant ASRock America, Inc. be awarded its costs of suit incurred in  
2 defense of this action; and,

3           3. For such other and further relief as the Court deems proper.

5 Dated: September 22, 2014

Respectfully submitted,

6           **BAKER & MCKENZIE LLP**

7           By: /s/ Tod L. Gamlen

8           Tod L. Gamlen

9           Attorneys for Defendant  
ASROCK AMERICA, INC.

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